

## Higher Education Funding Council for England

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| Title                                | Institutions' responsibilities in partnership arrangements   |
| To                                   | Heads of HEFCE-funded higher education institutions<br>Heads of HEFCE-funded further education and sixth form colleges<br>Heads of alternative providers |
| Of interest to those responsible for | Students, Planning, Data   |
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Dear Vice-Chancellor or Principal

### **Institutions' responsibilities in partnership arrangements**

1. This letter provides guidance on how responsibilities for students should be reported in data returns, for higher education (HE) providers offering courses through partnership arrangements. The guidance reflects recent advice from the Competition and Markets Authority (CMA) on how consumer protection law applies to HE providers, and on the arrangements that now apply to the submission of course information to, and payment of tuition fee loans by, the Student Loans Company (SLC). This letter also provides advance notification (at paragraph 22) that students will need to be registered with their awarding body for their course qualification before they can make a claim for fee payments from the SLC.

### **Summary**

2. Where courses are offered through partnerships between HE providers, it is important that the providers and their students are clear (from the application process onwards) where responsibilities lie. With the exception of 'joint courses' (as defined in paragraph 6c), the institution which has full contractual responsibility to the student for the provision of educational services is also the one which should include the student in data returns to us and, as appropriate, to the Higher Education Statistics Agency (HESA) or the Skills Funding Agency. Where access to student support is concerned, that same institution is also responsible for submitting course information to the SLC, which will then pay it the relevant tuition fee loans.

3. As the responsibility for reporting student data (other than for joint courses) depends on which institution has full contractual responsibility to the student for the provision of education, changes should be rare and made only in exceptional circumstances as to which institution reports data on students who are continuing on the same course. Institutions must secure each student's informed agreement before making any such exceptional change to their terms and conditions, which would in turn affect reporting arrangements. Special circumstances apply to joint courses offered by two or more institutions with degree awarding powers, which lead on successful completion to a joint award, or dual or multiple awards from each institution involved.

### **Responses and further information**

4. There are many different kinds of partnerships in higher education. This letter does not attempt to describe them all, but concentrates on the main arrangements that involve more than one higher education provider in delivering a course and awarding a qualification. We have tried

to keep terminology as non-technical as possible. **Annex A** shows draft technical definitions relating to registration and the student population that we intend to incorporate in our 2015 Higher Education Students Early Statistics (HESES) survey for higher education institutions. **Annex B** shows the equivalent draft definitions for the 2015 Higher Education in Further Education: Students (HEIFES) survey for further education and sixth form colleges (FECs).

5. If institutions have questions about their particular partnerships, or wish to discuss any issues that arise from the guidance in this document, they should email [recurrentgrant@hefce.ac.uk](mailto:recurrentgrant@hefce.ac.uk) in the first instance.

## Terminology

6. In this letter, the term **partnership** applies to any arrangements which involve more than one HE provider in the delivery of a course and the award, on its successful completion, of an HE qualification (including credit towards such a qualification). These include:

- a. **Validation arrangements** – Courses made available and taught by one institution that lead on successful completion to a qualification awarded by another institution with degree awarding powers (DAPs). Usually the course will have been designed by the teaching and not the validating institution. There will usually be a validation agreement in place, in which the validating institution seeks assurances about the quality and delivery of the course but leaves the teaching institution leeway as to how it teaches the course. The institution with DAPs is the validating and awarding body for the course, while the institution which teaches the course has full contractual responsibility to the student for the provision of education.
- b. **Sub-contractual or ‘franchise’ arrangements** – Courses made available by one institution, where some or all of the teaching is provided by a different institution under a sub-contractual arrangement. These are often referred to as ‘franchises’, but we will refer to them as ‘sub-contractual arrangements’. The course will usually have been designed by the first institution, which will usually impose its own requirements as to teaching and assessment. That first institution has full contractual responsibility to the student for the provision of education, even though its staff are not teaching (all of) the course. Usually, that institution will also be the awarding body for the course qualification, but exceptionally this may be a third party.
- c. **Joint courses** – Courses made available by two or more institutions with DAPs, in which each institution has a responsibility for the provision of education to students, quality and quality assurance, and which lead on successful completion to a joint award, or dual or multiple awards from each institution involved. Teaching may be provided in varying proportions by these institutions. We do not believe any provision at or involving FECs meets this definition.

7. In relation to any individual course, we treat the concepts of validation and sub-contractual arrangements as being mutually exclusive. We recognise that the operation of such arrangements varies across the sector and that partners may agree their particular roles and responsibilities within such arrangements in relation to areas such as student recruitment and the provision of facilities. Notwithstanding that **some** responsibilities may therefore be shared, only one institution will have **full** contractual responsibility for the provision of educational services to the student.

8. We do **not** use the term ‘partnership arrangements’ in this letter to describe:
- a. Courses made available and taught by **one** institution which lead on successful completion to a qualification from an external awarding body such as Pearson Education Ltd (for Higher National Certificates and Diplomas) or City and Guilds (for teacher training qualifications), rather than an HE provider with DAPs. Nor are courses which lead to a professional qualification as well as an award from the teaching HE provider considered to be partnerships for that reason alone.
  - b. The arrangements between collegiate universities and their constituent colleges, although, as the advice we refer to in paragraph 10 from the CMA makes clear, the need for clarity about responsibilities in these institutions remains.
  - c. Work experience placements that are part of sandwich courses or study placements with other institutions (including outside the UK) that are part of exchange programmes, such as the Erasmus+<sup>1</sup> programme, rather than part of joint courses.
9. **Tuition fees** means fees as defined in Section 41 of the Higher Education Act 2004<sup>2</sup>.

### **Institutions’ contractual obligations towards students**

10. Students will commonly make a substantial financial commitment in undertaking HE study, including through the tuition fees that they pay. It is therefore important that it is clear what they can expect in return, and from whom. The CMA published advice in March 2015 for HE providers and undergraduate students on consumer law as it applies to the provision of educational services<sup>3</sup>. This sets out CMA’s views on the requirements on institutions relating to the provision of information, terms and conditions, and complaints processes, and makes clear that when an offer of a place on a course is accepted by a prospective student, the HE provider and student enter into a contract. Institutions should familiarise themselves with the CMA advice and the underlying legislation that applies. They may also wish to seek their own legal advice.

### **Payment of tuition fees**

11. This section draws attention to a change from the SLC with regard to partnerships within the HEFCE-funded sector. Where courses are designated for student support purposes, the SLC will, with the exception of joint courses, pay tuition fee loans to the institution with full contractual responsibility to the student for the provision of their education (rather than to any institution providing teaching under a sub-contractual relationship). This applies irrespective of when a student may have started their course and arises:

- a. **In relation to partnerships involving alternative providers**, from the government document ‘Alternative higher education providers: specific course designation – criteria and conditions’, first published in March 2014<sup>4</sup>. This guidance includes, from page 7, a definition of franchise (sub-contractual) arrangements that has applied since 2014-15.
  - b. **In relation to any other partnerships**, from the SLC’s Courses Management Service Guidance Document for 2015-16<sup>5</sup>, which provides guidance on page 6 about the treatment of courses provided under franchise (sub-contractual) arrangements. This is a change in approach by the SLC.
12. Where joint courses are concerned, it is an important requirement that the responsibilities of each partner institution towards the student are clear, and that the students themselves understand what those responsibilities are and where they lie. Even though these responsibilities

will rest with multiple institutions, tuition fees should still be paid to a single institution for any given year of study, but may be paid to different institutions for different years of study. Institutions should seek advice from the SLC on how arrangements for fee payments should be managed.

## **Responsibility for reporting student data**

13. We intend to revise our guidance for the 2015 HESES and HEIFES surveys to make clear that, with the exception of joint courses, the institution with full contractual responsibility to a student for the provision of educational services is responsible for reporting the student in those surveys and in data returns to HESA or the Skills Funding Agency. Thus, in reporting student data to us, institutions will be confirming their contractual responsibilities for the provision of education to these students. This will align the approach of HEFCE with that of the SLC and CMA.

14. As the responsibility for reporting student data is dependent on which institution has the full contractual responsibility to the student, no change should be made as to which institution reports data on students continuing on the same course without each student's informed permission. The only case where we expect this to be common practice is in formal collaborative research programmes (such as Doctoral Training Partnerships or Centres for Doctoral Training), where students will often transfer having completed an MRes.

15. For joint courses, institutions should determine at the outset what proportion of the initial entry cohort should be reported by each institution. Reflecting this proportion, each student should then be assigned to a single institution when they start their course, and retain this assignment until they finish it. This approach will support student tracking for performance indicators and other longitudinal studies.

16. It is not necessary to revise the guidance on this in the Higher Education in Alternative Providers Early Statistics (HEAPES) survey, as that already reflects the approach outlined above as contained in government guidance on franchise arrangements referred to in paragraph 11.a.

## **Access agreements**

17. A HEFCE-funded institution wishing to charge regulated tuition fees above the 'basic amount' permitted in legislation must have an access agreement in force with the Office for Fair Access (OFFA) that specifies the fees that may be charged to students commencing courses in that year<sup>6</sup>. For partnership arrangements, there is no change as to which institution would need to secure such an agreement. In summary, this falls:

- a. **In a validation arrangement**, on the institution making the course available and teaching it, which has the full contractual responsibility to the student for the provision of education.
- b. **In a sub-contractual arrangement**, on the institution that makes the course available and has the full contractual responsibility to the student for the provision of education. Any other institution contracted by the first to provide (some of) the teaching on the course would not require an access agreement covering that course, although it will be the responsibility of the first institution to ensure that its own access agreement is fully adhered to.

- c. **For joint courses**, on all the HE providers in England within the partnership that together have responsibility for the provision of educational services to the student.

## **Public information**

18. There is no change to institutions' responsibilities for providing public information. In summary, the institution with full contractual responsibility to the student for the provision of education is responsible for ensuring that the Key Information Set (KIS) is submitted for the course. However, to ensure that it can provide a realistic picture of provision, the KIS is normally shown relative to the institution at which the student will be taught. To present consistent KIS for all courses taught at an institution, the actual submission of the KIS will normally be made by the institution at which the student is taught, although the responsibility for ensuring this happens remains with the institution with full contractual responsibility to the student.

19. Performance indicators published by HESA will relate to the institution that reports the student data – that is, (with the exception of joint courses) the one with full contractual responsibility to the student for the provision of education.

## **Changes to HESES and HEIFES for 2015-16**

20. **Annexes A and B** set out revised guidance that we intend to include in the 2015 HESES and HEIFES surveys on the population of students that each covers.

21. 'Recurrent teaching grant from 2015-16', HEFCE Circular letter 30/2013, set out changes that we proposed to the collection of data in HESES15 and HEIFES15 arising from our review of the teaching funding method. In addition to the changes listed there, we will no longer collect the table previously required for the monitoring of the student number control, which has been removed from HEFCE-funded providers from 2015-16. However, we propose to collect more information about student numbers on courses where (some of) the teaching for the year of study reported in the survey is provided under a sub-contractual arrangement by another HE provider. This will be through a new table on which institutions will be asked to identify:

- a. Each institution (including alternative providers) providing teaching on their behalf under a sub-contractual arrangement.
- b. The headcount numbers of students included in Columns 1 and 2 of Tables 1 to 3 of the surveys who are taught by each of those institutions, broken down by mode (full-time and sandwich year out or part-time), level (undergraduate, postgraduate taught or postgraduate research) and fundability status (HEFCE-fundable, Non-fundable or Island and overseas).
- c. The headcount of new entrants included in the disaggregation described in sub-paragraph b.

## **Registration with awarding bodies**

22. From 1 January 2015, it has been a requirement that students at alternative providers must be registered with the awarding body for the qualification to which their designated course leads before they are able to access student support from the SLC<sup>7</sup>. We understand that the Government will soon extend this requirement to students at all HE providers. This will affect students on courses provided through the kinds of partnership arrangements described in this letter. It will also affect those on courses described in paragraph 8.a, which are made available and taught by one institution (often an FEC) but which lead on successful completion to a

qualification from an external awarding body such as Pearson Education Ltd. The timing and details of this change have not yet been confirmed: we will notify institutions as soon as further information about this is available. Institutions may wish to check that they are ready for this change.

Yours sincerely

Professor Madeleine Atkins

Chief Executive

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<sup>1</sup> Erasmus+ is the European Union programme for education, training, youth and sport for the period from 2014 to 2020. Further information about it can be found at [www.erasmusplus.org.uk/](http://www.erasmusplus.org.uk/).

<sup>2</sup> See [www.legislation.gov.uk/ukpga/2004/8/section/41](http://www.legislation.gov.uk/ukpga/2004/8/section/41) and, for sub-paragraph (e) of the definition, the Education (Student Fees) (Exceptions) (England) Regulations 1999 (Statutory Instrument 1999/2265), at [www.legislation.gov.uk/uksi/1999/2265/contents/made](http://www.legislation.gov.uk/uksi/1999/2265/contents/made).

<sup>3</sup> Available at <https://www.gov.uk/government/collections/higher-education-consumer-law-advice-for-providers-and-students>.

<sup>4</sup> Available at <https://www.gov.uk/government/publications/alternative-higher-education-providers-specific-course-designation-criteria-and-conditions>.

<sup>5</sup> Available at [www.heiinfo.slc.co.uk/hep-services/courses-management-service/guidance-and-further-information.aspx](http://www.heiinfo.slc.co.uk/hep-services/courses-management-service/guidance-and-further-information.aspx).

<sup>6</sup> For information about drawing up an access agreement with OFFA, see [www.offa.org.uk/universities-and-colleges/](http://www.offa.org.uk/universities-and-colleges/). For guidance about tuition fee regulations, see [www.hefce.ac.uk/funding/fees/](http://www.hefce.ac.uk/funding/fees/). There have been no changes to regulated tuition fee limits between 2014-15 and 2015-16.

<sup>7</sup> For further information, see the documents available at: [www.heiinfo.slc.co.uk/hep-services/student-information-service/sis-guidance-and-further-information.aspx](http://www.heiinfo.slc.co.uk/hep-services/student-information-service/sis-guidance-and-further-information.aspx). The requirement that students at alternative providers are registered with their awarding body is stated on pages 20, 41 and 46 of the Student Information Service (SIS) User Guide, and on page 1 of the SIS Quick Guides on Attendance Confirmation and Combined Confirmations.